

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

TRAE MOSE,

Petitioner,

vs.

US MARSHALL,

Respondent.

**8:22CV107**

**MEMORANDUM AND ORDER**

This matter is before the court on its own motion. Petitioner filed a Petition for Writ of Habeas Corpus (filing 1) on March 24, 2022. However, Petitioner failed to include the \$5.00 filing fee. Petitioner has the choice of either submitting the \$5.00 fee to the clerk's office or submitting a request to proceed in forma pauperis. If Petitioner chooses to do the latter, the enclosed pauper's forms should be completed and returned to this court. Failure to take either action within 30 days will result in the court dismissing this case without further notice to Petitioner.

This order will also serve as notice to Petitioner that the court will construe his habeas petition as one brought pursuant to 28 U.S.C. § 2241. Petitioner labeled his habeas petition as a "28 USC 2255 Petition", but 28 U.S.C. § 2255 applies to "prisoner[s] in custody under sentence" of a federal court. 28 U.S.C. § 2255(a). As Petitioner sets forth in his petition, he is a federal pretrial detainee awaiting trial. (See Filing 1 at CM/ECF p. 2.) See also *United States v. Trae A. Mose*, No. 8:20-cr-00321-BCB-MDN (D. Neb.) (Filing 60, March 25, 2022 Order setting trial for April 5, 2022).<sup>1</sup> Thus, Section 2241 is the appropriate vehicle to consider Petitioner's claims as it authorizes federal district courts to issue a writ of habeas

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<sup>1</sup> The court can sua sponte take judicial notice of its own records and files, and facts which are part of its public records. *United States v. Jackson*, 640 F.2d 614, 617 (8th Cir. 1981).

corpus to a state or federal prisoner who is in custody in violation of the Constitution or laws or treaties of the United States. 28 U.S.C. § 2241(c)(3).

IT IS THEREFORE ORDERED that:

1. Petitioner is directed to submit the \$5.00 fee to the clerk's office or submit a request to proceed in forma pauperis within 30 days. Failure to take either action will result in dismissal of this matter without further notice.
2. The clerk of the court is directed to send to Petitioner the Form AO240 ("Application to Proceed Without Prepayment of Fees and Affidavit").
3. The clerk of the court is directed to set a pro se case management deadline in this matter with the following text: **May 2, 2022**: Check for MIFP or payment.
4. The clerk of the court is further directed to update the cause of action for this suit to a 28 U.S.C. § 2241 Petition for Writ of Habeas Corpus (federal) and to remove the Nebraska Attorney General as an interested party.

Dated this 31st day of March, 2022.

BY THE COURT:



Richard G. Kopf  
Senior United States District Judge